

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 968**

Introduced by McGill, 26; Coash, 27; Conrad, 46.

Read first time January 19, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to domestic abuse; to amend sections 28-323,  
2 29-404.02, and 42-903, Reissue Revised Statutes of  
3 Nebraska; to redefine abuse for purposes of domestic  
4 assault, arrests without warrant, and the Protection from  
5 Domestic Abuse Act; and to repeal the original sections.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 28-323, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-323 (1) A person commits the offense of domestic  
4 assault in the third degree if he or she:

5           (a) Intentionally and knowingly causes bodily injury to  
6 his or her intimate partner; or

7           (b) Places, by physical menace, his or her intimate  
8 partner in fear of ~~imminent~~ bodily injury.

9           (2) A person commits the offense of domestic assault in  
10 the second degree if he or she intentionally and knowingly causes  
11 bodily injury to his or her intimate partner with a dangerous  
12 instrument.

13           (3) A person commits the offense of domestic assault in  
14 the first degree if he or she intentionally and knowingly causes  
15 serious bodily injury to his or her intimate partner.

16           (4) Violation of subsection (1) of this section is a  
17 Class I misdemeanor, except that for any second or subsequent  
18 violation of such subsection within twelve years after the date of  
19 the current conviction, any person so offending against the same  
20 intimate partner is guilty of a Class IV felony.

21           (5) Violation of subsection (2) of this section is  
22 a Class IIIA felony, except that for any second or subsequent  
23 violation of such subsection within twelve years after the date of  
24 the current conviction, any person so offending against the same  
25 intimate partner is guilty of a Class III felony.

1           (6) Violation of subsection (3) of this section is  
2 a Class III felony, except that for any second or subsequent  
3 violation under such subsection within twelve years after the date  
4 of the current conviction, any person so offending against the same  
5 intimate partner is guilty of a Class II felony.

6           (7) For purposes of this section, intimate partner means  
7 a spouse; a former spouse; persons who have a child in common  
8 whether or not they have been married or lived together at  
9 any time; and persons who are or were involved in a dating  
10 relationship. For purposes of this subsection, dating relationship  
11 means frequent, intimate associations primarily characterized by  
12 the expectation of affectional or sexual involvement, but does not  
13 include a casual relationship or an ordinary association between  
14 persons in a business or social context.

15           Sec. 2. Section 29-404.02, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17           29-404.02 (1) Except as provided in section 42-928, a  
18 peace officer may arrest a person without a warrant if the officer  
19 has reasonable cause to believe that such person has committed:

20           (a) A felony;

21           (b) A misdemeanor, and the officer has reasonable cause  
22 to believe that such person either (i) will not be apprehended  
23 unless immediately arrested, (ii) may cause injury to himself  
24 or herself or others or damage to property unless immediately  
25 arrested, (iii) may destroy or conceal evidence of the commission

1 of such misdemeanor, or (iv) has committed a misdemeanor in the  
2 presence of the officer; or

3 (c) One or more of the following acts to one or more  
4 household members, whether or not committed in the presence of the  
5 peace officer:

6 (i) Attempting to cause or intentionally and knowingly  
7 causing bodily injury with or without a dangerous instrument;

8 (ii) Placing, by physical menace, another in fear of  
9 ~~imminent~~ bodily injury; or

10 (iii) Engaging in sexual contact or sexual penetration  
11 without consent as defined in section 28-318.

12 (2) For purposes of this section:

13 (a) Household members shall include spouses or former  
14 spouses, children, persons who are presently residing together or  
15 who have resided together in the past, persons who have a child in  
16 common whether or not they have been married or have lived together  
17 at any time, other persons related by consanguinity or affinity,  
18 and persons who are presently involved in a dating relationship  
19 with each other or who have been involved in a dating relationship  
20 with each other; and

21 (b) Dating relationship means frequent, intimate  
22 associations primarily characterized by the expectation of  
23 affectional or sexual involvement, but does not include a casual  
24 relationship or an ordinary association between persons in a  
25 business or social context.

1           Sec. 3. Section 42-903, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           42-903 For purposes of the Protection from Domestic Abuse  
4 Act, unless the context otherwise requires:

5           (1) Abuse means the occurrence of one or more of the  
6 following acts between household members:

7           (a) Attempting to cause or intentionally and knowingly  
8 causing bodily injury with or without a dangerous instrument;

9           (b) Placing, by ~~physical menace~~, means of credible  
10 threat, another person in fear of ~~imminent~~ bodily injury; or

11           (c) Engaging in sexual contact or sexual penetration  
12 without consent as defined in section 28-318;

13           (2) Department means the Department of Health and Human  
14 Services;

15           (3) Family or household members includes spouses or  
16 former spouses, children, persons who are presently residing  
17 together or who have resided together in the past, persons who  
18 have a child in common whether or not they have been married  
19 or have lived together at any time, other persons related  
20 by consanguinity or affinity, and persons who are presently  
21 involved in a dating relationship with each other or who have  
22 been involved in a dating relationship with each other. For  
23 purposes of this subdivision, dating relationship means frequent,  
24 intimate associations primarily characterized by the expectation  
25 of affectional or sexual involvement, but does not include a

1 casual relationship or an ordinary association between persons in a  
2 business or social context; and

3 (4) Law enforcement agency means the police department  
4 or town marshal in incorporated municipalities, the office of the  
5 sheriff in unincorporated areas, and the Nebraska State Patrol.

6 Sec. 4. Original sections 28-323, 29-404.02, and 42-903,  
7 Reissue Revised Statutes of Nebraska, are repealed.